



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: TEAM Support Services, Inc.

File: B-279379.2

Date: June 22, 1998

Jeanene K. Loudon for the protester.

Karen J. Carroll, Esq., Environmental Protection Agency, for the agency.

Peter A. Iannicelli, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that evaluator was biased against the protester and improperly downgraded the protester on past performance based upon the evaluator's opinion of the protester's work as incumbent contractor is denied where the record contains no evidence of bias, the evaluator's opinion of the protester's prior work was relevant since the evaluator was the project officer during the several years that the protester performed as incumbent contractor, and the record shows that the evaluation of the protester's proposal was balanced, with the protester receiving high ratings on several aspects of its proposal and very low ratings on others.
 2. Evaluation of the protester's work on a contract for another agency was proper even though that contract was not listed as a reference in the protester's proposal, where the agency was aware of the protester's prior contract with another agency, the solicitation specifically stated that the agency might contact sources that were not listed as references in an offeror's proposal, and the information regarding the protester's prior work for another agency clearly was relevant to evaluation of the protester's past performance.
 3. Protest that agency evaluator was biased against the protester and the evaluation therefore tainted is denied where the record contains no evidence to support the bias allegation and the record shows that the evaluation was reasonable.
 4. Technically unacceptable proposal cannot be considered for award regardless of its low proposed price.
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DECISION

TEAM Support Services, Inc. protests the Environmental Protection Agency's (EPA) award of a support services contract to Transcontinental Enterprises, Inc. (TEI) pursuant to request for proposals (RFP) No. PR-NC-97-10730. TEAM alleges that the agency employee who evaluated proposals was biased against TEAM and

unreasonably downgraded TEAM's proposal. TEAM also contends that it should have been awarded the contract because its proposed price was less than TEI's. TEAM Protest, Enclosure 1 at 1-3.

We deny the protest.

Issued on December 1, 1997, the RFP solicited proposals for operation and maintenance (O&M) support services at several agency facilities in Corvallis and Newport, Oregon, for a basic contract period of 1 year with options for 4 additional years.¹ RFP Attachment 1 at 1-3; RFP § B.1. The RFP contemplated that the services would be provided on a fixed-price basis and that the contractor would be reimbursed the costs of materials. RFP § B.1.

The RFP stated that the contract would be awarded to the offeror whose proposal was most advantageous to the government after consideration of technical factors and price, and that technical quality was considered more important than price. RFP § M.3. The technical evaluation factors were: (1) past performance; (2) qualifications, work experience, availability, and other demonstrated ability of proposed personnel; (3) management approach, management structure, corporate resources; and (4) transition plan. *Id.* The RFP stated that the agency intended to award the contract without holding discussions. RFP § L.1.

Eight proposals were received by the January 8, 1998 closing date. As the anticipated dollar value of the contract was less than \$5 million, EPA conducted the procurement using "fast track" procedures. Contracting Officer's Statement, Apr. 8, 1998, at 3. The project officer alone evaluated all proposals, while the contracting officer, acting as the source selection official, selected the winning offer for award. After evaluating technical proposals and contacting references as part of the past performance evaluation, the project officer concluded that six of the eight proposals, including TEAM's proposal, were technically unacceptable. The project officer prepared a technical evaluation report which discussed the strengths, weaknesses and technical scores. After reviewing the evaluation report, the contracting officer determined that, of the two technically acceptable proposals, TEI's proposal was superior in technical quality and lower in price. The contracting officer also determined, after comparing the prices and the staffing levels of the various proposals and after comparing TEI's proposed price to the government estimate, that TEI's price was fair and reasonable. Source Selection Decision, Feb. 20, 1998, at 20-22. Accordingly, the contracting officer concluded that TEI's proposal represented the best value to the government, and, on February 20, 1998,

¹Previously, the O&M requirements for EPA facilities in Corvallis and Newport were performed under two separate contracts, one for Corvallis and one for Newport. TEAM had been the incumbent contractor for the Corvallis facilities continuously since 1988 and for the Newport facilities from 1990 through 1994.

awarded the contract to TEL. Id.; Contracting Officer's Statement, Apr. 8, 1998, at 7. After a debriefing, TEAM filed this protest in our Office.²

The protester primarily alleges that the project officer was biased against TEAM and, acting in bad faith, unfairly downgraded TEAM's proposal. The protester asserts that the project officer's dislike for TEAM primarily grew out of two cost allowability disputes that arose when TEAM was the incumbent contractor under the Corvallis contract. TEAM alleges that, because the project officer was biased against TEAM, he used his position as the sole evaluator to ensure that negative information was included in the information used to evaluate TEAM's past performance and then downgraded TEAM on the past performance evaluation factor. TEAM Protest, Enclosure 1 at 1-3.

The agency responds that the project officer evaluated TEAM's proposal fairly and in good faith. Agency Report at 12. In support, the agency submitted complete copies of the project officer's technical evaluation report, two declarations from the project officer, and the contracting officer's source selection decision, which the EPA believes show that the evaluation was unbiased and that the agency reasonably determined that TEAM's proposal was technically unacceptable. In addition, the project officer specifically denies bias against TEAM and states that he evaluated each proposal in a fair and even-handed manner, consistent with the RFP's evaluation scheme. Project Officer's Declaration, Apr. 8, 1998, at 1.

Government officials are presumed to act in good faith; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. Trataros/Basil, Inc., B-260321, May 30, 1995, 95-1 CPD ¶ 265 at 3. Where, as here, a protester alleges bias or bad faith on the part of a procurement official, the protester must present evidence that the official acted with the intent to injure the protester. Science & Tech., Inc.; Madison Servs., Inc., B-272748 et al., Oct. 25, 1996, 97-1 CPD ¶ 121 at 6. In addition to producing credible evidence showing bias, the protester must demonstrate that the alleged bias translated into action that unfairly affected the protester's competitive position. Pearl Properties, Inc., B-277250.2, Sept. 18, 1997, 97-2 CPD ¶ 80 at 5. Our review of the record reveals no evidence that the project officer was biased against the protester or that he improperly downgraded the protester's proposal.

²Because TEAM was not represented by counsel, we did not issue a protective order and TEAM was provided only redacted versions of the agency report and supporting documents. However, in resolving the protest, we reviewed in camera unredacted copies of all evaluation and source selection documents in light of the protest arguments raised by TEAM. As much of the information reviewed by our Office is source selection sensitive and proprietary in nature, our discussion of the evaluation will necessarily be limited.

TEAM asserts that its strained relationship with the project officer was caused in part by a funding dispute and in part by a disagreement with the project officer (concerning the number and type of TEAM personnel that were allowed access to the Corvallis facility during a government furlough) that arose while TEAM was performing the Corvallis contract. The disagreements that arose under the Corvallis contract are matters of contract administration and are not properly before us for resolution. Bid Protest Regulations, 4 C.F.R. § 21.5(a) (1998). However, we examined the entire record, including the parties' disparate versions of the facts associated with these matters, in light of the bias allegation, and we found no support for the protest allegation. Rather, the agency actions about which TEAM complains appear to be the result of the reasonable exercise of the project officer's discretion to make decisions during the administration of a contract. Certainly, the project officer's disagreement with TEAM over these and any other contract administration matters provides no evidence that the project officer acted with the intent to injure TEAM during his evaluation of TEAM's proposal in the current procurement. Furthermore, in two sworn statements, the project officer disputed much of the protester's anecdotal support for the allegation and specifically denied any bias. Even if we assume for the sake of argument that the project officer was hostile towards TEAM as a result of his previous dealings with the firm, as discussed below, there is no evidence of bias in the evaluation record and, therefore, we have no basis to object to the project officer's evaluation of TEAM's proposal.

The protester contends that the project officer included certain negative information concerning TEAM's past performance in the evaluation record and improperly used that information to downgrade TEAM's proposal on past performance, the most important evaluation factor. Specifically, TEAM alleges that the project officer used his personal knowledge and opinion of TEAM's performance as the incumbent under the EPA Corvallis facility contract to downgrade TEAM's evaluation score. TEAM also alleges that the project officer improperly solicited a past performance questionnaire from a knowledgeable National Aeronautics and Space Administration (NASA) contracting official regarding TEAM's performance on a contract that TEAM had performed previously for that agency and used that information to further downgrade TEAM's proposal. TEAM asserts that the project officer's asking NASA for a reference was "the work of a malicious saboteur manipulating what should be an impartial process to get his way." TEAM Protest, Enclosure 1 at 2. Our review of the evaluation record, however, reveals that the project officer's evaluation of TEAM's proposal was both reasonable and proper.

We see nothing wrong with the project officer's evaluating TEAM's previous performance on the EPA Corvallis contract and incorporating his own opinion of and experiences with TEAM into that evaluation. See, e.g., National Med. Seminars Tempharmacists, B-233452, Feb. 22, 1989, 89-1 CPD ¶ 191 at 2. The RFP stated that offerors would be evaluated on demonstrated successful past performance as evidenced by information gathered concerning contracts for similar work completed

in the last 3 years or currently being performed, and TEAM's proposal highlighted the fact that TEAM had been performing the EPA Corvallis contract for the last 3 years and specifically listed the project officer as a reference. RFP § M.3(b)1; TEAM Proposal, Jan. 6, 1998, Past Performance, at 1. As the prior EPA Corvallis requirement was one of two contracts (the other being the EPA Newport contract) that had been combined to create the present requirement, this clearly was a relevant contract for evaluating TEAM's past performance on similar work. See G. Marine Diesel, B-232619.3, Aug. 3, 1989, 89-2 CPD ¶ 101 at 6. Moreover, the project officer's opinion of TEAM's working relationship (i.e., the level of TEAM's cooperation in resolving the cost disputes) with EPA personnel clearly was relevant to evaluation of TEAM's past performance. See Young Enters., Inc., B-256851.2, Aug. 11, 1994, 94-2 CPD ¶ 159 at 6.

The project officer's past performance questionnaire for the Corvallis contract contains no evidence that the project officer was biased against TEAM or that he unreasonably downgraded TEAM. Overall, the project officer's appraisal appears to be balanced with the project officer rating TEAM from satisfactory to excellent on some aspects of past performance and unsatisfactory on others. For example, TEAM's proposal emphasized that EPA management had given it "outstanding marks" concerning its performance on the EPA Corvallis contract during semi-annual management reviews, TEAM Proposal, Jan. 6, 1998, Past Performance, at 1, and, consistent with the proposal's statement, the project officer rated TEAM very high on several areas of past performance, including: (1) the project officer stated that TEAM's on-site management was "excellent" and he was "very satisfied" with TEAM's on-site support; (2) the project officer rated TEAM as "very satisfactory" on initiative in meeting the requirements, response to technical direction, and customer satisfaction; (3) the project officer also rated TEAM as "satisfactory" on quality of service, timeliness of performance, and responsiveness to performance problems. However, the project officer also downgraded TEAM because, in his opinion, TEAM's corporate management had been "difficult to work with" in connection with the dispute over the accidental overpayment and the claim for payment for nonessential employees during the government furlough, and the project officer indicated that he would not choose to work with TEAM again. Accordingly, the project officer rated TEAM's on-site management as "very satisfactory" overall, while he rated its corporate management as "unsatisfactory" overall because he believed TEAM's corporate management to be uncooperative. Project Officer's Past Performance Questionnaire on TEAM. While TEAM does not agree that its corporate management was uncooperative or difficult to work with, we have no basis to find unreasonable the project officer's contrary opinion, and we think that the negative statements made by the project officer reflect dissatisfaction with TEAM management rather than bias against the firm. See Trataros/Basil, Inc., *supra*, at 4.

Likewise, we see nothing wrong with the project officer's sending a past performance questionnaire to NASA. The project officer explains that he was aware

of the NASA contract from his conversations with TEAM managers. He also explains that he solicited the NASA reference even though the contract was not listed in TEAM's proposal, because he had been able to contact only one TEAM reference for a prior non-EPA contract, and that one reference was for a very small contract. The project officer states that he sent a questionnaire about TEAM's performance of the NASA contract to the NASA contracting officer's technical representative (COTR), because the NASA contract was closer in size, complexity and dollar value to the estimated value of the present procurement than most of the other contracts that TEAM listed as references. Project Officer's Declaration, Apr. 8, 1998, at 4. The information garnered from the NASA COTR was largely negative concerning TEAM's performance. For example, the NASA COTR reported that the TEAM corporate staff was not effective in selecting or managing the on-site staff; TEAM's corporate staff was "adversarial, would not let NASA staff see own records"; and that she would not choose to contract with TEAM again. NASA COTR's Past Performance Questionnaire on TEAM. The project officer, in our view, reasonably downgraded TEAM on past performance based in part on this negative information.

In evaluating proposals, the agency may properly consider evidence from sources that are not listed in the proposal, Pearl Properties; DNL Properties, Inc., B-253614.6, B-253614.7, May 23, 1994, 94-1 CPD ¶ 357 at 7; G. Marine Diesel, supra, at 6. Here, the RFP specifically stated that the agency might contact past contract sources that were not listed as references in an offeror's proposal, and the project officer specifically sought the contracting officer's advice and received permission to contact the NASA reference before sending NASA a questionnaire. RFP § L.12(g); Contracting Officer's Statement, Apr. 8, 1998, at 5. We will not, as the protester suggests, attribute improper motives to the project officer for obtaining information concerning TEAM's past performance on the NASA contract simply because the information received from that source was, in large part, detrimental to TEAM's past performance evaluation. Insofar as TEAM contends that its performance of the NASA contract should not have been considered because the scope of work under the NASA contract was not similar in nature to the present requirement, the protest fails because the record shows that, for the most part, the negative information contained in the NASA reference questionnaire related not so much to the technical aspects of TEAM's performance as to TEAM's corporate management's effectiveness in selecting and managing on-site personnel and to TEAM's working relationship with NASA, information that clearly was relevant to evaluation of TEAM's past performance regardless of the type of work to be performed. See Young Enters., Inc., supra, at 6.

The protester also contends generally that the entire evaluation was tainted by the project officer's bias against TEAM. The protester states that it cannot understand how it received such a low score, and asserts that the answer must lie in a prejudicial evaluation by the project officer. Other than the past performance

allegations, discussed above, TEAM's protest does not allege any specific evaluation flaws.

In reviewing an agency's evaluation of proposals, our Office will question the evaluation only where it lacks a reasonable basis or is inconsistent with the RFP's stated evaluation criteria. DAE Corp., Ltd., B-257185, Sept. 6, 1994, 94-2 CPD ¶ 95 at 4. A protester's mere disagreement with the agency over its evaluation does not establish that the evaluation was unreasonable. Id. We reviewed all of the evaluation documents in light of the protester's general bias allegation, and we find no evidence that EPA's evaluation was tainted or otherwise unreasonable.³

On the past performance factor, the evaluator reasonably rated TEAM's proposal overall as satisfactory. He based this rating on information contained in questionnaires received from three of the references listed in TEAM's proposal (including his own questionnaire for the EPA's predecessor Corvallis contract), as well as the NASA questionnaire. In response to questions contained in those four questionnaires, two of the references gave TEAM adjectival ratings ranging from satisfactory to outstanding, and two of the references (discussed in detail above) gave TEAM ratings ranging from unsatisfactory to excellent. In fact, the NASA reference indicated that for the most part she was not satisfied with TEAM's performance. Two of the four references stated that they would choose to contract with TEAM again, while the two others stated that they would not. Faced with this wide range of ratings, the evaluator reasonably determined that TEAM's collective past performances merited an overall rating of adequate. While TEAM obviously disagrees with the evaluator's assessment, the protester's mere disagreement with the agency over its evaluation does not establish that the evaluation was unreasonable. DAE Corp., Ltd., supra, at 4. Moreover, in view of the fact that the evaluator gave TEAM a satisfactory rating in spite of his own negative opinion of TEAM's corporate management, we see no evidence that he was biased against TEAM or unreasonably downgraded the protester on this factor.

On the qualifications, work experience, availability, and other demonstrated ability of proposed personnel, the evaluator reasonably rated TEAM's proposal overall as superior. This rating was primarily based upon the fact that all of TEAM's key personnel were qualified for their respective positions and all had worked for EPA on the predecessor contracts. The high rating that the evaluator gave TEAM on this factor undercuts the allegation that the evaluator was prejudiced against TEAM.

³Because the protester has not provided specific reasons why it believes its proposal was unreasonably downgraded, we will not discuss every aspect of the evaluation, but rather, will provide a few examples to show why the TEAM proposal received a low evaluation score and was determined to be technically unacceptable and to illustrate that the evaluation was not biased against TEAM.

The evaluator did downgrade TEAM's proposal on the management approach subfactor of the management approach, management structure, and corporate resources evaluation factor because he found several flaws in TEAM's proposed management approach. For example, TEAM proposed no permanent employees for general on-site labor for such tasks as hanging bulletin boards or moving furniture; instead, TEAM proposed to use small, local subcontracts to do that type of work. The evaluator believed that TEAM's approach created the risk that maintenance and operation tasks would be unacceptably delayed, because the local construction industry would be competing for the same laborers and the evaluator believed it unlikely that TEAM could obtain local labor in a timely manner. Project Officer's Declaration, Apr. 8, 1998, at 3. Another weakness was TEAM's proposed use of an unstaffed "trouble desk" that would be monitored by a recording device; the evaluator opined that this was an ineffective way to respond to unplanned work activities. Technical Evaluation Report, Jan. 29, 1998, at 30. Because of these and other flaws that the evaluator found in TEAM's approach--the most notable being the conclusion that TEAM's reliance on other than on-site staff was a "serious weakness"--the evaluator rated TEAM's proposal as inadequate. Agency Report at 5-7; Technical Evaluation Report, Jan. 29, 1998, at 30.

On the management structure subfactor of the management approach, management structure, and corporate resources evaluation factor, the evaluator rated TEAM's proposal as deficient. While the evaluator found a number of deficiencies in TEAM's proposed management and staffing, the primary deficiency was that TEAM's proposal was understaffed. TEAM proposed a staff of only 9.3 people to do the work for both the Corvallis and Newport facilities, even though the two predecessor contracts had employed 21.5 people (15 for Corvallis and 6.5 for Newport). TEAM designated only two employees to service the Newport facilities, seven to service the Corvallis facilities, and 0.3 off-site employees for engineering support. Agency Report at 8; Technical Evaluation Report, Jan. 29, 1998, at 31. The evaluator knew from past experience at the sites that the daily maintenance requirements were substantial, requiring performance of at least 400 preventative maintenance tasks each month. The evaluator concluded that TEAM's proposal was understaffed and that the proposal failed to demonstrate how TEAM would be able to perform the required work in a timely manner with crews at each site that were less than half of the previous crews that had been used to perform the work. Project Officer's Declaration, Apr. 8, 1998, at 2-3; Project Officer's Declaration, Apr. 24, 1998, at 1-2.

The agency reports that TEAM's proposed staffing level was substantially lower than the awardee's proposed staffing and the average staffing level proposed by the other offerors and that TEAM's proposal was determined to be technically unacceptable chiefly because TEAM proposed too few on-site staff and failed to demonstrate that it could provide a timely response to work requirements. Agency Report at 10-12. In its comments on the agency report, TEAM contends that, as an incumbent contractor, it was better able to determine the correct staffing level than

the project officer/evaluator. We note that, even during the development of the protest record, TEAM provided no information to refute the evaluator's determination that more staff would be needed, and TEAM did not explain how it would be able to perform properly with its reduced staff. TEAM simply disagrees with EPA's evaluation of its proposal and determination that the proposal was technically unacceptable. TEAM's mere disagreement provides no basis for finding the evaluation unreasonable, and the evaluation record is devoid of any evidence that the evaluation and determination of technical unacceptability was the result of bias against TEAM.⁴ See Atlantic Coast Contracting, Inc., B-259082.3, July 17, 1995, 95-2 CPD ¶ 21 at 5.

In sum, the record shows that the evaluation of TEAM's proposal was reasonable and contains no evidence to support the allegation that the evaluation was tainted by prejudice against TEAM. In view of the fact that TEAM's proposal was reasonably determined to be technically unacceptable, TEAM's contention that it should have been awarded the contract on the basis of its lower proposed price is without merit as it is well settled that a technically unacceptable proposal cannot be considered for award, notwithstanding its low proposed price. Spectrum Controls Sys., Inc., B-275505, Feb. 27, 1997, 97-1 CPD ¶ 89 at 3-4.

The protest is denied.

Comptroller General
of the United States

⁴As previously noted, our discussion above contains only examples of both the strengths and weaknesses that were reasonably found to exist in TEAM's proposal. Although EPA found a number of additional weaknesses in the TEAM proposal, we believe that the agency's rejection of TEAM's proposal as technically unacceptable was justified on the basis of the low proposed staffing level alone.